

APPEAL,CLOSED,TYPE I-FOIA

U.S. District Court
District of Columbia (Washington, DC)
CIVIL DOCKET FOR CASE #: 1:17-cv-01448-ABJ

AMERICAN OVERSIGHT v. U.S. DEPARTMENT OF
HEALTH AND HUMAN SERVICES et al
Assigned to: Judge Amy Berman Jackson
Cause: 05:552 Freedom of Information Act

Date Filed: 07/20/2017
Date Terminated: 03/30/2019
Jury Demand: None
Nature of Suit: 895 Freedom of
Information Act
Jurisdiction: U.S. Government Defendant

Plaintiff**AMERICAN OVERSIGHT**

represented by **Sara Kaiser Creighton**
AMERICAN OVERSIGHT
1030 15th Street, NW
Suite B255
Washington, DC 20005
(202) 869-5246
Fax: (202) 871-6523
Email: sara.creighton@americanoversight.org
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant**U.S. DEPARTMENT OF HEALTH
AND HUMAN SERVICES**

represented by **Michael Hendry Baer**
U.S. DEPARTMENT OF JUSTICE
Civil Division, Federal Programs Branch
1100 L Street, NW
Washington, DC 20530
(202) 305-8573
Fax: (202) 616-8470
Email: michael.h.baer@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant**OFFICE OF MANAGEMENT AND
BUDGET**

represented by **Michael Hendry Baer**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
07/20/2017	<u>1</u>	COMPLAINT against OFFICE OF MANAGEMENT AND BUDGET, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (Filing fee \$ 400 receipt number 0090-5039890) filed by AMERICAN OVERSIGHT. (Attachments: # <u>1</u> Exhibit A - HHS FOIA, # <u>2</u> Exhibit B - OMB FOIA, # <u>3</u> Exhibit C - HHS Letter, # <u>4</u> Civil Cover Sheet, # <u>5</u> Summons USAO, # <u>6</u> Summons AG, # <u>7</u> Summons HHS, # <u>8</u> Summons OMB)(Creighton, Sara) (Entered: 07/20/2017)
07/20/2017	<u>2</u>	LCvR 7.1 CERTIFICATE OF DISCLOSURE of Corporate Affiliations and Financial Interests by AMERICAN OVERSIGHT (Creighton, Sara) (Entered: 07/20/2017)
07/20/2017		Case Assigned to Judge Amy Berman Jackson. (zsb) (Entered: 07/20/2017)
07/20/2017	<u>3</u>	SUMMONS (4) Issued Electronically as to OFFICE OF MANAGEMENT AND BUDGET, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, U.S. Attorney and U.S. Attorney General (Attachment: # <u>1</u> Consent Form)(zsb) (Entered: 07/20/2017)

		07/20/2017)
07/26/2017	<u>4</u>	RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed as to the United States Attorney. Date of Service Upon United States Attorney on 7/25/2017. (Answer due for ALL FEDERAL DEFENDANTS by 8/24/2017.), RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed. All Defendants, RETURN OF SERVICE/AFFIDAVIT of Summons and Complaint Executed on United States Attorney General. Date of Service Upon United States Attorney General 07/25/2017. (Attachments: # <u>1</u> Exhibit A)(Creighton, Sara) (Entered: 07/26/2017)
08/24/2017	<u>5</u>	ANSWER to Complaint by OFFICE OF MANAGEMENT AND BUDGET, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES.(Baer, Michael) (Entered: 08/24/2017)
08/25/2017		MINUTE ORDER. Before the Court in this FOIA case are a complaint and an answer. The requirements of Local Civil Rule 16.3 and Rule 26(f) of the Federal Rules of Civil Procedure appear to be inapplicable. Defendants shall file a dispositive motion or, in the alternative, a report setting forth the schedule for the completion of its production of documents to plaintiff on or before September 29, 2017. SO ORDERED. Signed by Judge Amy Berman Jackson on 8/25/2017. (lcabj3) (Entered: 08/25/2017)
09/29/2017	<u>6</u>	STATUS REPORT by OFFICE OF MANAGEMENT AND BUDGET, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Baer, Michael) (Entered: 09/29/2017)
10/02/2017		MINUTE ORDER. It is ORDERED that defendant, the U.S. Department of Health and Human Services ("HHS"), shall submit another status report on October 30, 2017, proposing the rate by which it will process the records it identifies as responsive to plaintiff's request. Also defendants HHS and the Office of Management and Budget are ORDERED to file a joint report on the status of their rolling productions by December 28, 2017. SO ORDERED. Signed by Judge Amy Berman Jackson on 10/02/2017. (lcabj3) (Entered: 10/02/2017)
10/30/2017	<u>7</u>	STATUS REPORT <i>and Proposed HHS Processing Rate</i> by OFFICE OF MANAGEMENT AND BUDGET, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Baer, Michael) (Entered: 10/30/2017)
10/31/2017	<u>8</u>	RESPONSE re <u>7</u> STATUS REPORT by AMERICAN OVERSIGHT. (Creighton, Sara) Modified event title on 11/1/2017 (znmw). (Entered: 10/31/2017)
11/01/2017	<u>9</u>	RESPONSE re <u>8</u> Response to Status Report by OFFICE OF MANAGEMENT AND BUDGET, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3)(Baer, Michael) Modified event title and link on 11/2/2017 (znmw). (Entered: 11/01/2017)
11/02/2017		MINUTE ORDER. With respect to the 3148 responsive records mentioned in <u>6</u> defendants' September 29, 2017 status report, defendant is directed to process the materials at the rate of at least 400 records per month. With respect to as-yet-to-be-quantified additional gigabytes of information, plaintiff proposed in its response <u>8</u> to defendant HHS's October 30, 2017 status report <u>7</u> that the Court direct the parties to meet and confer regarding the scope of the search. While plaintiffs have been free to suggest such a procedure to the defense directly, without the involvement of the Court, the Court hereby ORDERS the plaintiff and defendant HHS to meet and confer in an effort to narrow the scope of plaintiffs' request, to reach an agreement on the handling of duplicates, and to develop a more useful estimate of the number of records involved and the time it would take to produce them. The parties may contact chambers if as part of that process, they agree that they would benefit from the assistance of a neutral mediator. The parties must file a status report that includes a joint proposed schedule for production, or individual schedules if they are unable to agree, by November 16, 2017. Signed by Judge Amy Berman Jackson on 11/02/2017. (lcabj3) (Entered: 11/02/2017)
11/16/2017	<u>10</u>	Joint STATUS REPORT by OFFICE OF MANAGEMENT AND BUDGET, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Baer, Michael) (Entered: 11/16/2017)

11/17/2017		MINUTE ORDER. The Department of Health and Human Services shall process the additional 30 documents it has identified in accordance with the other records under review. The parties shall submit an updated status report on January 12, 2018. Signed by Judge Amy Berman Jackson on 11/17/2017. (lcabj3) (Entered: 11/17/2017)
12/28/2017	<u>11</u>	STATUS REPORT by OFFICE OF MANAGEMENT AND BUDGET, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Baer, Michael) (Entered: 12/28/2017)
01/12/2018	<u>12</u>	Joint STATUS REPORT by AMERICAN OVERSIGHT. (Creighton, Sara) (Entered: 01/12/2018)
01/12/2018		MINUTE ORDER. The parties shall submit an updated joint status report on February 16, 2018. Signed by Judge Amy Berman Jackson on 01/12/2018. (lcabj3) (Entered: 01/12/2018)
02/16/2018	<u>13</u>	Joint STATUS REPORT by AMERICAN OVERSIGHT. (Creighton, Sara) (Entered: 02/16/2018)
02/20/2018		MINUTE ORDER. It is hereby ordered that defendants shall file their motion for summary judgment along with their Vaughn index by April 9, 2018. Plaintiff's opposition (and cross motion, if any, supported by the same memorandum of points and authorities) will be due May 7, 2018. Defendants' reply (combined with its cross opposition, if necessary) will be due June 4, 2018. Plaintiff's cross reply, if any, will be due June 18, 2018. Signed by Judge Amy Berman Jackson on 02/20/2018. (lcabj3) (Entered: 02/20/2018)
02/20/2018		Set/Reset Deadlines: Defendants Motion for Summary Judgment along with their Vaughn index is due by 4/9/2018; Plaintiff's Opposition and any Cross Motion is due 5/7/2018; Defendants' Reply combined with any Cross Opposition is due by 6/4/2018. Plaintiff's cross reply, if any, is due by 6/18/2018. (jth) (Entered: 02/25/2018)
04/09/2018	<u>14</u>	MOTION for Summary Judgment by OFFICE OF MANAGEMENT AND BUDGET, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Declaration of Michael S. Marquis, # <u>3</u> Declaration of Sarah C. Arbes, # <u>4</u> Declaration of Heather V. Walsh, # <u>5</u> Declaration of Emma K. Doyle, # <u>6</u> Statement of Facts, # <u>7</u> Text of Proposed Order)(Baer, Michael) (Entered: 04/09/2018)
04/12/2018	<u>15</u>	ENTERED IN ERROR.....Joint STATUS REPORT by AMERICAN OVERSIGHT. (Creighton, Sara) Modified on 4/12/2018 (zrdj). (Entered: 04/12/2018)
04/12/2018		NOTICE OF CORRECTED DOCKET ENTRY: re <u>15</u> Status Report was entered in error (Wrong Case) and counsel will refile said pleading in the correct case. (zrdj) (Entered: 04/12/2018)
05/07/2018	<u>16</u>	Cross MOTION for Summary Judgment by AMERICAN OVERSIGHT (Attachments: # <u>1</u> Memorandum in Support, # <u>2</u> Text of Proposed Order, # <u>3</u> Declaration of Sara Kaiser Creighton, # <u>4</u> Exhibit 1, # <u>5</u> Exhibit 2, # <u>6</u> Exhibit 3, # <u>7</u> Exhibit 4, # <u>8</u> Statement of Facts)(Creighton, Sara) (Entered: 05/07/2018)
05/07/2018	<u>17</u>	Memorandum in opposition to re <u>14</u> MOTION for Summary Judgment filed by AMERICAN OVERSIGHT. (Attachments: # <u>1</u> Text of Proposed Order, # <u>2</u> Declaration of Sara Kaiser Creighton, # <u>3</u> Exhibit 1, # <u>4</u> Exhibit 2, # <u>5</u> Exhibit 3, # <u>6</u> Exhibit 4, # <u>7</u> Response to Defendants' Statement of Facts, # <u>8</u> Plaintiff's Statement of Facts)(Creighton, Sara) (Entered: 05/07/2018)
05/25/2018	<u>18</u>	Consent MOTION for Extension of Time to File Response/Reply as to <u>16</u> Cross MOTION for Summary Judgment , <u>14</u> MOTION for Summary Judgment by OFFICE OF MANAGEMENT AND BUDGET, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (Attachments: # <u>1</u> Text of Proposed Order)(Baer, Michael) (Entered: 05/25/2018)
05/29/2018		MINUTE ORDER granting <u>18</u> Consent Motion for Extension of Time. Defendants' reply, combined with its cross opposition, will be due June 11, 2018. Plaintiff's cross reply will be due June 25, 2018. Signed by Judge Amy Berman Jackson on 05/29/2018. (lcabj3) (Entered: 05/29/2018)

06/01/2018	<u>19</u>	Consent MOTION for Extension of Time to file <i>Reply in Support of Cross-Motion for Summary Judgment</i> by AMERICAN OVERSIGHT (Creighton, Sara) (Entered: 06/01/2018)
06/04/2018		MINUTE ORDER granting <u>19</u> Consent Motion for Extension of Time. Plaintiff must file its cross-reply by June 29, 2018. Signed by Judge Amy Berman Jackson on 06/04/2018. (lcabj3) (Entered: 06/04/2018)
06/05/2018		Set/Reset Deadlines: Plaintiff's cross-reply due by 6/29/2018. (tg) (Entered: 06/05/2018)
06/11/2018	<u>20</u>	Memorandum in opposition to re <u>16</u> Cross MOTION for Summary Judgment filed by OFFICE OF MANAGEMENT AND BUDGET, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Attachments: # <u>1</u> Declaration of Heather V. Walsh (Second), # <u>2</u> Statement of Facts (Response to Plaintiff's Statement))(Baer, Michael) (Entered: 06/11/2018)
06/11/2018	<u>21</u>	REPLY to opposition to motion re <u>14</u> MOTION for Summary Judgment filed by OFFICE OF MANAGEMENT AND BUDGET, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES. (Attachments: # <u>1</u> Declaration of Heather V. Walsh (Second))(Baer, Michael) (Entered: 06/11/2018)
06/29/2018	<u>22</u>	REPLY to opposition to motion re <u>16</u> Cross MOTION for Summary Judgment filed by AMERICAN OVERSIGHT. (Attachments: # <u>1</u> Supplemental Creighton Declaration, # <u>2</u> Exhibit 5, # <u>3</u> Exhibit 6)(Creighton, Sara) (Entered: 06/29/2018)
07/06/2018	<u>23</u>	NOTICE of Filing Concerning Recent Discretionary Release by OFFICE OF MANAGEMENT AND BUDGET, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (Attachments: # <u>1</u> Exhibit 1)(Baer, Michael) (Entered: 07/06/2018)
08/17/2018	<u>24</u>	NOTICE OF SUPPLEMENTAL AUTHORITY by OFFICE OF MANAGEMENT AND BUDGET, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES (Attachments: # <u>1</u> Exhibit 1)(Baer, Michael) (Entered: 08/17/2018)
08/28/2018	<u>25</u>	RESPONSE by AMERICAN OVERSIGHT re <u>24</u> NOTICE OF SUPPLEMENTAL AUTHORITY (Attachments: # <u>1</u> Exhibit A)(Creighton, Sara) Modified event title on 8/30/2018 (znmw). (Entered: 08/28/2018)
09/04/2018		MINUTE ORDER. The parties need not file any additional pleadings in this matter related to objections to the magistrate judge's Report and Recommendation in 17-cv-827. The parties may, if they wish, inform the Court when Judge Sullivan enters his opinion in that matter, at which time the Court will have access to it on the Electronic Case Files system. Signed by Judge Amy Berman Jackson on 9/4/18. (DMK) (Entered: 09/04/2018)
03/30/2019	<u>26</u>	ORDER. Pursuant to Federal Rules of Civil Procedure 56 and 58, and for the reasons stated in the accompanying Memorandum Opinion, it is hereby ORDERED that defendants' motion for summary judgment <u>14</u> is DENIED. It is FURTHER ORDERED that plaintiff's cross-motion for summary judgment <u>16</u> is GRANTED. SO ORDERED. Signed by Judge Amy Berman Jackson on 03/30/2019. (lcabj3) (Entered: 03/30/2019)
03/30/2019	<u>27</u>	MEMORANDUM OPINION. Signed by Judge Amy Berman Jackson on 03/30/2019. (lcabj3) (Entered: 03/30/2019)
05/29/2019	<u>28</u>	NOTICE OF APPEAL TO DC CIRCUIT COURT as to <u>26</u> Order on Motion for Summary Judgment,,, <u>27</u> Memorandum & Opinion by OFFICE OF MANAGEMENT AND BUDGET, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES. Fee Status: No Fee Paid. Parties have been notified. (Baer, Michael) (Entered: 05/29/2019)